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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/538,868

06/14/2005

Alcario Koverech

2801-138

7287

23117

7590

06/04/2008

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EXAMINER

WEBB, WALTER E

ART UNIT

PAPER NUMBER

1612

MAIL DATE

DELIVERY MODE

06/04/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/538,868

**Applicant(s)**

KOVERECH, ALEARDO

**Examiner**

WALTER E. WEBB

**Art Unit**

1612

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 March 2008.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 5, 10 and 11 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1, 5 and 10-11 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date 2/27/2008  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Applicants' arguments, filed 3/3/2008, have been fully considered but they are not deemed to be persuasive. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Claim Rejections - 35 USC § 103***

The rejection of claims 1, 3-5 and 10-11 under 35 USC 103(a) as being unpatentable over Iliceto et al. in view of Cavazza et al. is maintained with regard to claims 1, 5 and 10-11.

Applicant argues, "if it was so obvious to adopt a different administration regimen, doctors would have already used the study design of the present invention to reduce the number of deaths." However, applicant has supplied no evidence to support this argument. Moreover, the mere fact that adjustments might or might not have been made is not relevant to a finding of obviousness, particularly given that reasonable inferences may be taken into account in establishing a prima facie case. See KSR International Co. v. Teleflex Inc., 82 USPQ2d at 1396, and MPEP § 2141 (C. Resolving the Level of Ordinary Skill in the Art). The Iliceto reference promotes early administration of L-carnitine, within 24hrs of onset of symptoms of the infarction, which

includes a time period of 4 hours from the onset of a symptom of the infarction. Illiceto does not set a specific time for administering the L-carnitine. Because of this, the artisan would reasonably expect success in administering L-carnitine within 4 hours of the onset of symptoms.

Applicant further argues, "[i]f it is not trivial to save even a single human life (with respect to available treatments) than the present invention should not be considered obvious in light of D1." Obviousness was determined based on routine optimization that was deemed well within the purview of the artisan. Again, based on the teachings of the prior art, the artisan would reasonably expect success in administering L-carnitine within 4 hours of the onset of symptoms. The Illiceto reference has acknowledged a reduction in the incidence of death through early and subsequent administration of L-carnitine. Therefore, the artisan would reasonably optimize the administration of L-carnitine in an effort to save lives.

Applicant argues that the Cavazza reference adds nothing to the contents of the Illiceto reference. However, Cavazza provides motivation for administering L-carnitine orally to patients with myocardial infarction. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant argues that the combination of the references is illogical, but does not point out how the references are illogical. The references combined provide motivation for administering L-carnitine in pill form to patients that have experienced a myocardial

infarction. Iliceto alone provides motivation for routine optimization in an effort to save lives.

***Obvious-type Double Patenting***

Applicant's have filed a Terminal Disclaimer in response to the obvious-type double patenting rejection of claims 1, 3-5 and 10-1 over claims 8-11 and 14 of co-pending application 11/629,202. Accordingly, this rejection is withdrawn.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 1612

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter E. Webb whose telephone number is (571) 270-3287. The examiner can normally be reached on 8:00am-4:00pm Mon-Fri EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick F. Krass can be reached (571) 272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Walter E. Webb  
/Walter E Webb/  
Examiner, Art Unit 1612

/Frederick Krass/

Supervisory Patent Examiner, Art Unit 1612